

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PROFI-PARKIET SP. ZOO,

Plaintiff,

-against-

SENECA HARDWOODS, LLC,

Defendant.

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**ORDER ADOPTING
REPORT AND RECOMMENDATION
13-CV-4358 (PKC)(LB)**

PAMELA K. CHEN, United States District Court Judge:

Plaintiff Profi-Parkiet Sp. Zoo (“Profi-Parkiet”) commenced this action against Defendant Seneca Hardwoods LLC (“Seneca”), alleging that Seneca breached the terms of a sales agreement by providing wooden planks that did not conform to the parties’ agreed-upon specifications. Before the Court is the Report and Recommendation (“R&R”) of the Honorable Lois Bloom, dated May 23, 2014, recommending that: (1) Plaintiff’s motion for default judgment be granted based on Defendant’s breach of contract, but on no other of Plaintiff’s claims (R&R at 12); (2) Plaintiff be awarded damages in the amount of \$52,537.07 for loss incurred as a result of the breach, plus pre-judgment interest dating from February 2012, using the average rate of return on one-year Treasury bills, compounded annually (*id.* at 17–18); and (3) Plaintiff’s request for attorneys’ fees and costs be denied (*id.*). Judge Bloom further recommends that Plaintiff’s request for lost profits be denied based on the instant record, which fails to provide any evidence or estimate regarding the breakdown of variable and fixed costs associated with the potential sales upon which Plaintiff’s lost profits claim is based, but that Plaintiff may supplement its claim with further evidence. (*Id.* at 16–17.)

A district court reviews those portions of a report and recommendation to which a party has timely objected under a *de novo* standard of review and “may accept, reject, or modify, in whole or in part, the findings or recommendations” 28 U.S.C. § 636(b)(1)(C). However, where no objections to the Report and Recommendation have been filed, the district court “need only satisfy itself that that there is no clear error on the face of the record.” *Urena v. New York*, 160 F. Supp. 2d 606, 609–10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Here, the Report and Recommendation properly informed the parties that any objections had to be filed within 14 days of receipt of the report. (*See* R&R at 20 (citing 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)); *Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008)). Notice of the report was sent electronically to the parties via the court’s electronic filing system on May 23, 2014 (Dkt. 11), and Plaintiff served a copy of the report, by first-class and certified mail, on Defendant on May 30, 2014. (Dkt. 12.) The statutory period for filing objections has expired, and to date, no objections have been filed. (*See generally* Docket No. 13-CV-4358.) Accordingly, the Court reviews the report for “clear error.”

The Court finds no error in Judge Bloom’s well-reasoned report, and hereby affirms and adopts it in its entirety as the opinion of the Court.¹ Accordingly, (1) Defendant’s motion for default judgment is granted based on Plaintiff’s breach of contract claim; (2) Plaintiff’s claims for unjust enrichment, deceptive business practices, and negligent misrepresentation and interference with prospective economic advantage are dismissed with prejudice; (3) Plaintiff is awarded damages in the amount of \$52,537.07, plus pre-judgment interest dating from February 2012, using the average rate of return on one-year Treasury bills, compounded annually; (4)

¹ The Court notes only one typographical error in the last sentence of the first paragraph of the report, which should have included the word “interest” after “pre-judgment.” (R&R at 1.)

Plaintiff's request to recover for lost profits is denied, without prejudice; and (5) Plaintiff's request for attorneys' fees and costs is denied.

The Clerk of the Court is respectfully directed to enter judgment in Plaintiff's favor, to terminate this action, and to mail a copy of this Order to Defendant Seneca Hardwoods, LLC.

SO ORDERED:

/s/ Pamela K. Chen
PAMELA K. CHEN
United States District Judge

Dated: June 18, 2014
Brooklyn, New York